



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S MNDL-S MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for authority to retain the tenant's security deposit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, for a monetary order for alleged damage by the tenant to the rental unit and loss of rent, and for recovery of the filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that her husband served the tenant with their Application for Dispute Resolution and Notice of Hearing by handing them to her on June 14, 2019. The landlord's husband was called from the next room and confirmed that he had served the tenant in this manner, and provided the address where the service occurred.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The hearing process was explained to the landlord and she was given an opportunity to ask questions about the hearing process. Thereafter, the landlord was provided the opportunity to present her evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the tenant's security deposit, further monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord submitted that this tenancy began on August 1, 2018, monthly rent was \$3,150.00, and the tenant paid a security deposit of \$1,575.00. The landlord submitted further that she was granted an order of possession of the rental unit in a prior dispute resolution hearing with the Residential Tenancy Branch ("RTB") and that the tenant was removed from the rental unit by a bailiff, on April 13, 2019.

The landlord's listed monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Bailiff fees	\$2,000.00
2. Court fees, execution of writ of possession	\$120.00
3. Cleaning fees	\$367.50
4. Repairing damage to the rental unit	\$1,449.00
5. Dump fees	\$95.00
6. Fortis bills, Dec '18 through Apr '19	\$302.45
7. Hydro bills, Nov '18 through Mar '19	\$887.38
8. Loss of rent for April '19	\$3,150.00
9. Loss of rent for May 1-14, '19	\$1,575.00
TOTAL	\$9,946.33

Bailiff fees; court fees –

The landlord submitted that she obtained an order of possession of the rental unit; however, the tenant refused to move out. As such, the landlord was required to file her order of possession in the Supreme Court, incurring filing fees, and obtain a writ of possession. The landlord submitted further that she had to hire a bailiff to execute the writ of possession in order to enforce her order of possession.

The landlord submitted copies of the bailiff fee and the court costs to support this claim.

Cleaning fees-

The landlord testified that the tenants failed to attend the move-out inspection. The landlord submitted additionally that the rental unit required extensive cleaning, as the tenant did not properly clean the rental unit prior to being removed.

The landlord referred to the receipt from a cleaning company.

Repairing damage to the rental unit-

The landlord submitted that the tenant damaged the rental unit beyond normal wear and tear prior to being evicted. As a result, the landlord submitted that she hired a contractor to cut out damp drywall and replace it, to replace the baseboards, and to prep, prime and repaint portions of the rental unit.

The landlord submitted a copy of the invoice from the contractor.

Dump fees-

The landlord testified and referred to the submitted photographs to show that the tenant left many items of personal property and garbage, such that the landlord incurred costs in removing the property and garbage to the landfill. Further, the landlord submitted that the bailiff removed other items of furniture and left it at the curbside, which ultimately required a removal.

Hydro; Fortis-

As to the unpaid utilities, the landlord submitted that as per the written tenancy agreement, the tenant was to pay 65% of the hydro and gas, but failed to pay those costs. The landlord submitted further that the cost she has claimed was only 60% of the bills, which were submitted into evidence. The landlord also submitted copies of the demand letters.

Loss of rent for April '19-

The landlord submitted that the tenant remained in the rental unit until she was removed by the bailiff on April 13, 2019; however, she failed to pay the monthly rent for April, resulting in a loss of rent revenue.

Loss of rent for May 1-14, '19-

The landlord submitted that the cleaning and repairs were not completed in time to obtain a tenant at the beginning of May 2019, which caused her to suffer a loss of rent revenue from May 1-14, 2019, for which she is entitled to recover from the tenant.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. In this case, the landlord has the burden of proof to prove her claim on a balance of probabilities.

Bailiff fees; Court and Affidavit fees-

I find the landlord submitted sufficient evidence that the tenant failed to comply with an order of possession issued by the RTB, by her failure to vacate the rental unit. I find that the landlord suffered a financial loss by having to file the order of possession in the Supreme Court to obtain a writ of possession and have it enforced.

I find the landlord is entitled to her costs of having to enforce an order of the RTB, and under section 62(3) of the Act, I find the landlord is entitled to a monetary award of \$2,000.00 for the bailiff fees and \$120.00 for court and affidavit fees.

Cleaning, repairing, and dump fees-

As to the costs claimed by the landlord associated with cleaning, repairing, and hauling/dump fees, Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear.

As such, I find the tenant is required to remove all belongings including garbage and to clean the rental unit to a reasonable standard, leaving it undamaged except for normal wear and tear.

I find the landlord submitted sufficient documentary and photographic evidence that the tenant failed to properly and reasonably clean the rental unit, that she left many items of personal property, which required the landlord to remove and incur fees.

I also find the landlord submitted sufficient, unopposed evidence that the tenant damaged the rental unit beyond normal wear and tear, for which the tenant is responsible.

I find the costs claimed by the landlord to be reasonable and documented and I therefore approve the landlord's monetary claim of \$367.50 for cleaning, \$1,449.00 for repairs to the rental unit, and \$95.00 for dump fees.

Hydro; Fortis-

I find the landlord submitted sufficient, unopposed evidence that the tenant was obligated under the written tenancy agreement to pay 65% of the hydro and Fortis costs and failed to do so. I also find the landlord's claim to be reasonable and documented as she reduced the required amount to 60%. I therefore find the landlord is entitled to a monetary award as claimed of \$887.38 for hydro costs and \$302.45 for Fortis costs.

Loss of rent for April '19-

Although this tenancy ended by way of the landlord obtaining an order of possession of the rental unit, the tenant failed to vacate the rental unit and was removed. As the tenant failed to pay the monthly rent for April 2019, although still in the rental unit, I find the tenant's actions caused the landlord to suffer a loss of rent revenue for April, 2019.

I therefore grant her a monetary award of \$3,150.00.

Loss of rent for May 1-14, '19-

I find the landlord submitted sufficient and unopposed evidence that due to the state of the rental unit left by the tenant, the landlord was required to make clean and make repairs. I find it reasonable that the landlord was unable to re-rent the rental unit until May 15, 2019. I therefore find the landlord is entitled to a monetary award of \$1,575.00.

I grant the landlord recovery of her filing fee of \$100.00, due to her successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord a monetary award of \$10,055.33, comprised of bailiff fees of \$2,000.00, court and affidavit fees of \$120.00, cleaning fees of \$367.50, repair costs of \$1,449.00, dump fees of \$95.00, Fortis bills of \$302.45, Hydro bills of \$887.38, loss of rent revenue of \$3,150.00 for April 2019, loss of rent revenue for May 1-14, 2019, for \$1,575.00, and the filing fee of \$100.00.

At the landlord's request, I direct her to retain the tenant's security deposit of \$1,575.00.00 in partial satisfaction of her monetary award of \$10,046.33.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$8,471.33.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, she has been authorized to retain the tenant's security deposit of \$1,575.00, and she has been awarded a monetary order for the balance due, in the amount of \$8,471.33.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 3, 2019

Residential Tenancy Branch